EXPLANATION OF

38

فروع الفقه

Ibn al-Mibrad

Shaykh Ahmad Musā Jibrīl

May Allāh (سبحانه وتعالى) ease the affairs of the Shaykh, preserve him, love him, and safeguard him from all harm. May He (سبحانه وتعالى) keep him sincere, and continue to shower his life and Da'wah with His blessings, and allow the Muslims to benefit from his da'wah until the Day of Judgement. May Allāh make all his efforts weigh heavy on his scales, and make it an immense Sadaqah Jāriyah for him, his parents, and his family. May Allāh facilitate the completion of this Sharh and shower him with His aid always and forever.

SH_AHMAD_JIBRIL

SH_AHMAD_JIBRIL

T.ME/AHMAD_MUSA_JIBRIL

SHAYKH AHMAD MUSĀ JIBRĪL

SHAYKH AHMAD MUSĀ JIBRĪL

بسم الله الرحمن الرحيم

الحمد لله رب العالمين، والصلاة والسلام على أشرف الأنبياء والمرسلين، سيدنا ونبينا محمد،

وعلى آله وصحبه أجمعين، اما بعد:

RECAP

We are continuing with the topic of the nullifiers of Ghusl or the causes of Ghusl. That is after completing the nullifiers of Wudū.

The author رحمه الله تعالى said;

وَفِي الطَّهَارَةِ الْكُبْرَىٰ سِتَّةٌ

For major impurity, there are six nullifiers.

The first one we talked about was;

الْمَنِيُّ الدَّافِقُ بِلَذَّةٍ

The discharge of sperm was strength, lust, and desire.

We took the Masā'il of the discharge of sperm while one is awake and while one is asleep.

The second matter that necessitates Ghusl is;

وَالْتِقَاءُ الْخِتَانَيْنِ

Waltiqa'ul khitanayni is intercourse.

And under that, we took Masā'il.

1. Ghusl is not Wājib if the private parts of the husband merely touch the private parts of a wife, without inserting, of course, and without the discharge of Manīyy. The Hadīth in Sahīh Muslim,

   إِذَا جَلَسَ بَيْنَ شُعَبِهَا الأَرْبَعِ وَمَسَّ الْخِتَانُ الْخِتَانَ فَقَدْ وَجَبَ الْغُسْلُ

   Even though the Hadīth states "وَمَسَّ" which means "to touch", the touching of the private parts, it is actually referring to intercourse. Not merely touching.

2. If a man has intercourse with his wife and discharges Manīyy, it is a cause of major impurity and one must do Ghusl. Ghusl is Wājib.

3. Ghusl is Wājib on both the husband and wife, of course, if there was intercourse, even without the discharge of Manīyy.

4. What is considered a Shar'i intercourse? It is the insertion of the glands or the tip of the man's private parts, which is called Al-Hashafahh, the insertion of that is considered a Shar'i intercourse.

And we stopped here.

MAS'ALAH: WHAT IF A MALE'S GLANDS, THE HASHAFAH, IS MISSING?

What if a male's glands, the Hashafah, is missing? Either a birth defect or it was cut off for some reason? Medical reason or otherwise?

Some of the books of Fiqh mentioned;

وَيَكْفِي تَغْيِيبُ الْحَشَفَةِ أَو قَدْرِهَا

They said; *Intercourse is the insertion of the Hashafah or what's equivalent to it.*

So, if someone has a medical defect and doesn't have the Hashafah, if one inserts what is equivalent to the normal average size of a Hashafah in length, then that is the Shar'i definition for intercourse for him, and it causes major impurity.

And a side benefit -doesn't directly pertain to this chapter- but it is that Zina, adultery, fornication, takes the same ruling in this detail. The insertion of the Hashafah is what constitutes Zina والعياذ بالله . One of the guidelines in the definition of Zina is the insertion of the Hashafah. And when we say this, it is not to say that if the Hashafah doesn't enter, it's not a sin or to diminish the magnitude of that sin. But it is to show specific laws and regulations and rulings.

This is something we will get to in the chapter of Hudūd, إن شاء الله. What is short of inserting the Hashafah might be referred to as Zina in the same context that the Messenger ﷺ stated that eyes commit Zina.

فَالْعَيْنَانِ زِنَاهُمَا النَّظَرُ

In Sahīh al-Muslim: "*The Zina of the eyes is a lustful look.*"

But what is short of the insertion of the Hashafah is not considered the actual full-blown Zina, the Zina that one gets stoned and lashed for, and the extremely severe

punishment in the Akhira. Dunya-wise, there are other punishments like Ta'zeer for something like that. And إن شاء الله, we'll get to that in the section on Hudūd.

Three more Masā'il under *Waltiqa'ul khitanayni*, before we move on,

MAS'ALAH: IS GHUSL WĀJIB IF SOMEONE HAS RELATIONSHIP WITH A CONDOM OR A BARRIER?

This Mas'alah was discussed by the Ulama of the past. They didn't specifically say condoms, of course, but they did mention if one has intercourse while having something like a bag or a cloth on his private parts -which is similar to a condom- takes the same ruling.

THE PERMISSIBILITY OF USING CONDOM

The issue of the permissibility of using condom is different than the issue of Ghusl from intercourse while having a condom on. They are two different things. If we discuss whether Ghusl is required or not from intercourse with a condom, it doesn't mean we approve or disapprove of the usage of condoms.

We are talking about a certain Mas'alah. The ruling on whether it is permissible to use a condom or not is discussed elsewhere. But I will give you a summarized ruling on that, even though it doesn't belong here.

SUMMARIZED RULING ON USING CONDOMS

Using condoms takes the ruling of what was referred to back in the days as *"Al-Azl"*, having intercourse but discharging outside the female's private parts. The husband

needs the consent of a wife for this and it can only be temporary with no harm. And even with all that, it is extremely disliked unless there is a Shar'i reason, like an ill wife who may not be able to handle pregnancy.

DOES INTERCOURSE WITH A CONDOM OR A SIMILAR BARRIER OR COVERING CAUSE MAJOR IMPURITY AND REQUIRE GHUSL

Our Mas'alah is; Does intercourse with a condom or a similar barrier or covering cause major impurity and require Ghusl? The simple answer for everyone, for the beginners, is that Ghusl is required even with a barrier like a condom.

Now let me elaborate for Talabat Al-Ilm. There is a dispute on the matter.

THE FIRST OPINION; INTERCOURSE WITH A BARRIER OR A BAG OR LIKE A CONDOM DOES NOT CAUSE MAJOR IMPURITY AND REQUIRE GHUSL.

Some Ulama said intercourse with a barrier or a bag or like a condom does not cause major impurity and require Ghusl.

It is one of the opinions of the Shāfi'īyyah and one of the opinions of the Hanābilah.

FIRST PROOF: They said the intercourse occurred with a barrier or a covering. There was no touching of the private parts and for Ghusl to be required, the private parts must touch. There was a barrier, they didn't touch. There was no touching of the private parts and to require Ghusl, the private parts must touch. The literal meaning of the Hadīth that we took;

وَمَسَّ الْخِتَانُ الْخِتَانَ فَقَدْ وَجَبَ الْغُسْلُ

The Hadīth says "وَمَسَّ" the circumcised parts touching. They said there was no touching here. That is their first proof.

SECOND PROOF: They used Qiyās. They said this is comparable to the issue of one touching his own private parts and nullifying Wudū. If you remember, under the nullifiers of Wudū, we said if one touches his private parts, it nullifies Wudū. But we stipulated that in order for the touching to be (considered as) touching, it is without a barrier. If one touches his own private parts through a barrier, we said it doesn't nullify Wudū, according to the correct opinion.

They said we are going to do Qiyās (analogy) on that. They said the same way one touching his private parts through a barrier doesn't nullify Wudū because there is a barrier, intercourse through a barrier doesn't necessitate Ghusl unless of course there's discharge of Manīyy. That is the first opinion and their rationales and proof.

THE SECOND OPINION; ONE MUST DO GHUSL.

The second opinion is that one must do Ghusl. This is the opinion of some Mālikiyyah, some Shāfi'īyyah, some Hanābilah, some of the Hanafiyyah.

PROOF: They said the act is referred to as intercourse. And intercourse is what necessitates Ghusl. Intercourse is what makes Ghusl Wājib. And this is what this person did. If you asked what he did, he had intercourse. That is what causes Ghusl.

THE THIRD OPINION; GHUSL IS WĀJIB IF THE BARRIER IS LIGHT OR THIN.

The third opinion is they said Ghusl is Wājib if the barrier is light or thin. That is the opinion of some Mālikiyyah and Al-Hattāb said that's the opinion of the Madhab. Some

Shāfi'īyyah and some Hanafiyyah adopted this. If the barrier is thick, Ghusl is not Wājib and if the barrier is thin, Ghusl is Wājib.

WHAT IS THICK AND THIN ACCORDING TO THEM?

Now just to give you a little bit more details, what is thick and thin according to them?

- Some Mālikiyyah who adopted this said the thickness should be at a level where there is no Laddhah, there is no enjoyment if one used that barrier. If that is the case, it is thick enough where the person didn't feel no enjoyment, then Ghusl is not required.
- Shāfi'īyyah said a thick barrier is what acts as a barrier between the vaginal wetness and the man's private parts and where the man can't feel the warmth of the female's private parts. Their rationale is if the barrier is light, it doesn't stop one from full enjoyment or feeling the warmth or wetness. If it is light, they said, it is like the barrier is not there.

AR-RĀJIH

The Rājih, the correct opinion is that Ghusl is Wājib with intercourse, whether the barrier is light or thick.

Why? Because one engaged in an act that is referred to as intercourse. And like I said, if you ask; What did he do? The answer is; he had sexual intercourse. You ask him what did you do? (He would answer) I had intercourse. And intercourse is what necessitates Ghusl. Feeling of warmth or thick and thin barrier are not factors.

Using the Hadīth;

وَمَسَّ الْخِتَانُ الْخِتَانَ فَقَدْ وَجَبَ الْغُسْلُ

When the circumcised parts touch each other, Ghusl is obligatory.

It says "وَمَسَّ" in that Hadīth, in Arabic, "وَمَسَّ" means touch. But "وَمَسَّ" in that Hadīth means intercourse. It is not taken literally. Intercourse takes place with the insertion of the Hashafah, even if the skin doesn't touch the skin, like with the barrier of a condom.

MAS'ALAH: MUST YOU TAKE A SHOWER IMMEDIATELY AFTER INTERCOURSE?

The next Mas'alah; Must you take a shower immediately after intercourse? It is a common misconception. The answer is; Ghusl is not required immediately after intercourse. Ghusl after intercourse is Wājib, but it is Wājib with laxity in its timing. (وُجُوبٌ مُتَرَاخِي) There is no designated time frame.

Some think that they have to go and run and make Ghusl immediately after intercourse. That is just like some who think if one sleeps on Janābah in Ramadan, and they wake up to the Adhān of the Fajr while they are Junub, and the fasting day started, they think their fasting is void because the fasting started while they were under major impurity. Those are misconceptions.

Some Ulama said it is better to hasten the Ghusl, but it is not required to hasten it. For our purposes, we say there is no time frame for the requirement of the Ghusl from Janābah other than not to miss the Salāh.

There is even the Hadīth, in Sahīh al-Bukhārī, where the Messenger ﷺ came across Abū Hurairā رضي الله عنه . Abū Hurairā was under major impurity. He was Junub. And the Messenger ﷺ took the hand of Abū Hurairā. When they sat, Abū Hurairā slipped away, went and made Ghusl and returned. When Abū Hurairā رضي الله عنه returned, the Messenger ﷺ asked Abū Hurairā, *"Where were you? Where have you been?"* Abū Hurairā رضي الله عنه

explained to him what had happened. He was Junub, went and made Ghusl and returned. So the Messenger ﷺ said,

سُبْحَانَ اللَّهِ يَا أَبَا هِرٍّ إِنَّ الْمُؤْمِنَ لاَ يَنْجُسُ

"Subhanallah Abū Hirr! A believer never becomes impure."

If Abū Hurairā رضي الله عنه did something wrong, the Messenger ﷺ would have corrected him. If Abū Hurairā رضي الله عنه did something wrong, the Messenger ﷺ would have said, *Why did you delay your Ghusl? Abū Hurairā, why did you leave your house without Ghusl?* Or*, It is good that you went and made Ghusl and came back. You should always hasten your Ghusl.*

But none of that was said and the Messenger ﷺ doesn't delay explaining orders when circumstances arise. Ibn Hajar رحمه الله تعالى said, this Hadīth is proof that it is permissible to delay the Ghusl.

THE FIQH OF BUKHĀRĪ IS IN HIS CHAPTER TITLES.

And also, al-Bukhārī. Keep in mind that al-Bukhārī's choice of naming his chapter titles shows his precise thinking and deep Fiqh. In addition to being a Muhaddith, his mere wordings in choosing his chapter titles show his deep knowledge in Fiqh. That is why some say;

فِقْهُ البُخَارِي فِي تَرَاجِمِهِ

The Fiqh of Bukhārī is in his chapter titles.

Probably the person who said that was Abū al-Abbas Ahmed ibn Ismail, who's the maternal grandfather of Nāsir al-Dīn ibn al-Munayyir. He died around 683. Nāsir al-Dīn

related his maternal grandfather's statement. And that statement became popular among the Ulama after that.

Sahīh al-Bukhārī is a compilation of Ahādīth. But al-Bukhārī is a Faqīh, just as he was a Muhaddith. And since his book is a compilation of Ahādīth, he slips in Fiqh opinions through the wording of his chapter titles. He shows the Fiqh of the Ahādīth through the chapter titles.

And why do I say this? Several times in this class and in other classes, we say al-Bukhārī mentioned this Hadīth under title so and so. Or al-Bukhārī has a title in his book that states so and so. Fuqahā use the wording of his chapter titles to substantiate their position in showing that that's al-Bukhārī's opinion on that matter.

Chapter headings, as we know, are supposed to be summarized and short. And they were in his book. But the simple choice of words that he chose for chapter titles amazed and astonished Ulama for centuries after.There are volumes and books written just on the Fiqh of al-Bukhārī in choosing his chapter titles.

I mentioned the Hadīth in Sahīh al-Bukhārī that the Messenger ﷺ met Abū Hurairā رضي الله عنه. And Abū Hurairā slipped away, made Ghusl and returned. And the Messenger ﷺ asked him what he did, and he informed him. Al-Bukhārī mentioned this Hadīth several times throughout his book. One of the times that he mentioned this Hadīth he put it under the chapter or the title of;

بَابُ: الْجُنُبُ يَخْرُجُ وَيَمْشِي فِي السُّوقِ وَغَيرِهِ

Chapter (Baab): A Junub (someone under major impurity) can go out and walk in the market or anywhere else.

What do you learn from that chapter heading? You learn that al-Bukhārī's opinion on this matter is that a person doesn't have to immediately make Ghusl from Janābah.

There is also another Hadīth in Sahīh al-Bukhārī;

أَنَّ عُمَرَ بْنَ الْخَطَّابِ، سَأَلَ رَسُولَ اللَّهِ ﷺ "أَيَرْقُدُ أَحَدُنَا وَهْوَ جُنُبٌ؟"

قَالَ " نَعَمْ إِذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَرْقُدْ وَهُوَ جُنُبٌ "

Umar رضي الله عنه asked the Messenger ﷺ "Can we sleep while we're under Janābah?" The Messenger ﷺ said; "You can sleep while Junub if you perform Wudū."

THE CONCLUSION

So the conclusion is the timing for the Ghusl from Janābah is relaxed. You're not required to do it at a specific time unless it is time for Salāh, then it becomes required due to the timing of the Salāh.

MAS'ALAH: MUST ONE MAKE WUDŪ BEFORE HE SLEEPS? IS IT WĀJIB?

A sub-issue or a separate issue that arises from that is; Must one make Wudū before he sleeps? Is it Wājib?

The Messenger ﷺ said to Umar رضي الله عنه in the previous Hadīth you can sleep on Janābah if you perform Wudū.

إِذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَرْقُدْ وَهُوَ جُنُبٌ

THE SUMMARY ANSWER

The summary answer for that is; It is Sunnah to wash the private parts and make Wudū if one sleeps on Janābah or if one is going to eat or drink or have relationship again while Junub.

ELABORATION FOR TALABATUL ILM

Let me elaborate now for Talabat al-Ilm;

THE FIRST OPINION; IS NOT WĀJIB IT IS JUST SUNNAH

The majority of the Ulama Shāfi'īyyah and Hanābilah and one of the opinions of the Mālikiyyah say that Wudū is not Wājib it isjust Sunnah.

THE SECOND OPINION; IT IS WĀJIB.

Some Mālikiyyah and Dāwūd Adh-Dhāhiri said it is Wājib. One must do Wudū before he sleeps if he's Junub. They use the Hadīth of Umar رضي الله عنه with its various narrations, that order a Junub to do Wudū before he sleeps.

إِذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَرْقُدْ وَهُوَ جُنُبٌ

You can sleep on Janābah if you perform Wudū.

There are other narrations of that Hadīth where the Messenger ﷺ answered,

تَوَضَّأْ وَاغْسِلْ ذَكَرَكَ ثُمَّ نَمْ

Or

لِيَتَوَضَّأْ ثُمَّ لْيَنَمْ

Ordering one to make Wudū before he sleeps if he is Junub. That is ordering one to do Wudū.

COUNTER ARGUEMENT FOR THE SECOND OPINION

Some ulema countered that by a Hadīth in Sunan Abū Dāwūd and al-Tirmidhi and Ibn Majah where Aisha رضي الله عنها said

كَانَ رَسُولُ اللَّهِ ﷺ يَنَامُ وَهُوَ جُنُبٌ وَلاَ يَمَسُّ مَاءً

The Messenger ﷺ would sleep while he was Junub, without touching water, without performing Ghusl.

According to many Ulema and the correct opinion is that it is weak. Ibn Hajar in al Talkhees and Imam Ahmad and al-Tirmidhi and Abū Dāwūd and al-Dāraqutni, said this is a weak Hadīth. And when studying it and analyzing it you will find that it is a weak Hadīth.

However, some authenticated that Hadīth. Tahhawi and al-Bayhaqi and al-Hakim considered that Hadīth authentic, that the Messenger ﷺ would sleep while he was Junub without touching water meaning without making Wudū. They considered it authentic.

Now, those who consider it authentic have an issue. You have on one hand Hadīth Umar رضي الله عنه ordering one to make Wudū before sleeping and you have Hadīth Aisha رضي الله عنها that the Messenger ﷺ slept while Junub without making Wudū. So they went about in four ways trying to combine between those. And (we are mentioning it) just to show you how Ulama think.

HOW ULAMA (WHO CONSIDERED HADĪTH AISHA رضي الله عنها AUTHENTIC) COMBINED THE TWO AHĀDĪTH

I. They said Hadīth Aisha رضي الله عنها that the Messenger ﷺ slept without making Wudū without touching water, they said that is an act of the Messenger ﷺ leaving out Wudū sometimes before sleeping to show the Ummah that it is not Wājib.

II. Some said that *"he slept without touching water"* means that he didn't touch the water of Ghusl. He didn't make Ghusl but rather he made Wudū. He didn't touch the water of Ghusl he touched the water of Wudū.

III. Some combined between those by saying that if he became Junub in the beginning of the night or early in the night he would make Wudū. But if it was towards the end of the night closer to fajr for example, he wouldn't make Wudū.

IV. Some said the Wudū here is not the Wudū of Salāh, it is the linguistic Wudū of cleaning oneself up.

That is just to show you how Ulama think and how they analyze things. If they consider it authentic, they have to combine between the two.

However, Hadīth Aisha رضي الله عنها that the Messenger ﷺ would sleep while he was Junub without touching water is clearly weak. There is no need for any of those four ways or other ways to combine between what appears to be conflicting Ahādīth. We only try to combine between authentic Ahādīth if they appear to conflict.

IS IT WĀJIB TO MAKE WUDŪ?

But there is still an issue here. The Messenger ﷺ said to Umar رضي الله عنه "You can sleep while Junub if you perform Wudū."

إِذَا تَوَضَّأَ أَحَدُكُمْ فَلْيَرْقُدْ وَهُوَ جُنُبٌ

The Messenger ﷺ told Umar رضي الله عنه to make Wudū and sleep. We say;

The origin of orders is that orders are obligatory unless something deters it from that.

الْأَمْرُ يَدُلُّ عَلَى الْوُجُوبِ مَا لَمْ تَصْرِفْهُ قَرِينَةٌ

An order from the Quran and sunnah is Wājib unless there is evidence to suggest otherwise. *"Make Wudū before you sleep if you are Junub"* is an order. That is why some Mālikiyyah and Dawood al-Dhahiri said that Hadīth Umar رضي الله عنه is an order, and that means it is Wājib to make Wudū before you sleep. That is an order. An order means it is Wājib, so you must do it.

The majority of the Ulama said it is not Wājib.

WHAT DISMISSES IT FROM WUJŪB TO BEING MUSTAHAB?

Now, what dismisses it from Wujūb, from being obligatory, to being mustahab? There are several ways to show that.

1. First of all, had Hadīth Aisha رضي الله عنها been authentic that would have been decisive.

   We would have said this Hadīth establishes that it's not for Wujūb because the Messenger ﷺ went to sleep while Junub without touching water, without making Wudū. But we can't use that because it is weak.

However, some Ulama use the Hadīth that's in Sunan al-Tirmidhi and Abū Dawood and an-Nasa'i;

" إِنَّمَا أُمِرْتُ بِالْوُضُوءِ إِذَا قُمْتُ إِلَى الصَّلاَةِ "

"I've only been commanded to perform Wudū if I get up to pray."

They said Wudū is not Wājib for someone going to sleep while Junub because he's not getting up for Salāh. The Hadīth says "*I only am ordered to get up to make Wudū if I get up for Salāh."* I've only been commanded to perform Wudū for Salāh. It means, the order to make Wudū for a person sleeping while Junub drops down to a Mustahab, because he is not getting up for Salāh. The Hadīth says I only am ordered to make Wudū for Salāh.

II. Another stronger proof that dismisses the Wujūb of Wudū before sleeping while Junub, to being a Mustahab rather than a Wājib, is that; (A narration) that was narrated by Ibn Hibban and Ibn Khuzaymah, and it appears to be Hasan. Ibn Khuzaymah said it is authentic. A narration of the answer of the Messenger ﷺ to Umar رضي الله عنه. He (Umar رضي الله عنه) said;

أَيَنَامُ أَحَدُنَا وَهُوَ جُنُبٌ ؟

قَالَ : " يَنَامُ وَيَتَوَضَّأُ إِنْ شَاءَ "

The Messenger ﷺ in that specific narration told Umar رضي الله عنه ;

"You can sleep and make Wudū, <u>if you want</u>."

<u>وَيَتَوَضَّأُ إِنْ شَاءَ</u>

If you want to make Wudu, it is optional.

So that proves that it is Mustahabb and not Wājib.

III. Another point is that the Dhahiriyyah who claimed Wudū for sleeping while Junub is Wājib, they say that it is based on the Hadith of an order to Umar;

تَوَضَّأْ وَاغْسِلْ ذَكَرَكَ ثُمَّ نَمْ

Or

لِيَتَوَضَّأْ ثُمَّ لْيَنَمْ

(The response to that is;)

Yes, like you are saying, those narrations order Wudū. But they also order sleep at the same time. Why would you make the order of Wudū obligatory, but not make the order of sleep obligatory as well?

That is a side issue.

Taken all together, we see that it is Mustahab and not Wājib.

I think we took many details so we should probably stop here before we get into the next cause of Ghusl, which is the third cause of Ghusl;

وَإِسْلَامُ الْكَافِرِ

When one becomes Muslim

Does one have to make Ghusl when he becomes Muslim? We will take that إن شاء الله in the next Halaqah.

وصلى الله على سيدنا محمد وعلى آله وصحبه وسلم

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